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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,322	06/05/2001	Thomas J. Bormann	440446	6774
23548	7590	10/17/2003	EXAMINER	
LEYDIG VOIT & MAYER, LTD 700 THIRTEENTH ST. NW SUITE 300 WASHINGTON, DC 20005-3960			MENON, KRISHNAN S	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 10/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b>	Application No. 09/806,322	Applicant(s) BORMANN ET AL.	
	Examiner Krishnan S Menon	Art Unit 1723	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached response.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1,2,4-7,9-14,17-25.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

*Joseph D. Dodge*  
**JOSEPH DODGE**  
**PRIMARY EXAMINER**

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*Response to arguments*

Applicant's arguments directed at whether there is suggestion in Pall (070) about combining the filters in to one housing, which may be found at: Col 11 lines 11-15 teaches that the filter could be a combination of leukocyte depletion medium and red cell barrier medium. Col 12 lines 13-18 teach a separation membrane 14, a membrane with porosity less than 5 microns (col 21 lines 30-43). Col 12 lines 30-35 states that one skilled in the art could configure the assemblies in different combinations. Col 10 lines 21-39 teach use of separation medium that transmits plasma but filters other components from blood. Col 30 lines 16-35 teach assemblies comprising one or more porous media. It would be obvious to one of ordinary skill that if one wants to separate the blood into individual components, one would require separate filters for each component. It may please be noted that if clogging was a problem, applicant's arguments re clogging would also be true for the filters 12 and 13 in Fig 2.

Argument re hold-up volume: Office action has shown that Pall '070 leads one of ordinary skill in the art to combine the filters to filter all other components to obtain plasma from blood, as above. It would be obvious to one of ordinary skill that by reducing the number of housings, one would reduce the volume hold-up (hold-up volume is implied as a concern in col 28 lines 45-52). If the filters 12 and 13 were to be in one housing, the volume hold up would reduce at least by the volume held in the tube connecting 12 and 13.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure,

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such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In the present case, there is ample suggestion in Pall (070) to combine the filters in one housing as pointed out in the above paragraphs.

JOSEPH DRODGE  
PRIMARY EXAMINER

  
JOSEPH DRODGE  
PRIMARY EXAMINER